IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

MFA.No. 108 of 2003()

OPMV.560/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA

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APPELLANT: 1ST RESPONDENT IN THE O.P.(M.V.)

J.MOHANAN, VAZHAVILAKATHU PUTHEN VEEDU,
KARUTHAMCODE P.O., NEYYATTINKARA.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS: APPLICANT & 2ND AND 3RD RESPONDENTS IN THE OP M.V.

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1. PONNAMMA, D/O.JANAMMA,
ROADARIKATHU PUTHEN VEEUDU,
MINI BHAVAN, KOONDHANIKILLY,
KULTHUMMAL, NEYYATTINKARA.

2. ANIL KUMAR, SREE BHAVAN,
PARAVILA, MARANALLOOR,
NEYYATTINKARA.

3. UNITED INDIA INSURANCE COMPANY LTD.,
BRANCH OFFICE, HOSPITAL JUNCTION,
NEYYATTINKARA.

BY ADV. SRI.BLAZE K.JOSE
SRI.THOMAS MATHEW NELLIMOOTTIL
SRI.MAJO K. JACOB

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

ORDER IN C.M.P NO. 482 OF 2003 IN M.F.A. NO. 108 OF 2003

DISMISSED

20-9-2007 SD/- K.PADMANABHAN NAIR, JUDGE

K.PADMANABHAN NAIR, J.

M.F.A. No.108 of 2003

Dated this the 20th day of September 2007

JUDGMENT

1st respondent in O.P(M.V) 560/1999 on the file of the M.A.C.T. Neyyattinkara, is the appellant.

2. The 1st respondent in this appeal(applicant in the O.P (M.V) filed an original petition claiming compensation of Rs. 1,00,000/- against the appellant and respondents 2 &3 in the O.P (M.V) It was alleged that on 21-11-1998 the 1st respondent sustained injuries in a motor vehicle accident . It was averred that while she was walking through the side of the road an autorickshaw bearing registration No. KL- 01-G-4122 which was driven by the 2nd respondent came in a rash or negligent manner and hit against her . She sustained injuries . It was averred that the appellant is the owner of the vehicle and the 2nd respondent is the driver. It was further averred that the vehicle was covered with a valid policy of insurance issued by the 3rd respondent. The appellant did not appear and contest. The 2nd respondent driver though appeared through a lawyer did not file any written statement.

3. The insurer alone contested the matter. It was contended that the negligence alleged against the driver of the autorickshaw was denied. The existence of a valid policy was admitted. The quantum of

compensation was also disputed. He was also contended the 2nd respondent was not in possession of a valid driving licence and hence the insurer is not liable to pay the compensation and there is violation of policy conditions.

4. The Tribunal have found that the accident occurred due to the negligence of the 2nd respondent, and the 1st respondent (applicant in the O.P (M.V) is entitled to get the compensation of Rs. 20,850/- Since the appellant and 2nd respondent failed to produce the driving licence of the 2nd respondent in spite of the order passed in I.A. 3851/2002 filed by the 3rd respondent, the Tribunal held that the driver was not in possession of valid driving licence hence there is violation of policy conditions. The Insurer was directed to pay the compensation and then recover the same from the appellant. Challenging that decision this appeal is filed.

5. The learned counsel for the appellant has argued that though the appellant engaged a counsel he did not file vakalath. It was contended that long prior to the accident the appellant has sold the vehicle to one Ragini and he was not the owner of the vehicle and that fact could not be brought to the notice of the Tribunal. . The appellant produced a photocopy of the that agreement entered into between himself and the said Ragini. He also produced and Registration particulars of the vehicle bearing Regn No. KL-91 G 4122. He also

deposed that he sold the vehicle to Ragini wife of Mohanan and the registration was also transferred to the name of Ragini. It is true that the appellant did not produce the transfer documents before the trial court. The documents which are produced before this court, along with a petition under Order 4 Rule 27 to receive the additional documents. Considering the entire facts and circumstances I am of the view that it is only just and proper that the appellant be given an opportunity to contest the mater on its merits. For that purpose the case has to go back.

6. In the result the appeal is allowed. The award passed by the Tribunal on 10-8-2002 in O.P (MV) 560/1999 is hereby set aside. The matter is remanded to the Tribunal for fresh disposal in accordance with law. It is made clear if the insurer had already deposited the amount and the 1st respondent (applicant in OP (MV)) had withdrawn the amount ,it is not necessary for her to deposit the amount again until fresh disposal is passed. The Tribunal is directed to pass an appropriate direction regarding the compensation already deposited, if the amount is withdrawn. The parties shall appear in the court below on 23-11-2007.

K.PADMANABHAN NAIR,JUDGE

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